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IN THE

Supreme Court of the United States

STEPHEN DANFORTH,

Petitioner,

—v.—

MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF MINNESOTA

BRIEF AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF MINNESOTA IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI*[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 550,000 members dedicated to the principles of liberty and equality embodied in the Constitution. The ACLU of Minnesota is one of its statewide affiliates. *Amici* respectfully submit this brief to assist the Court in resolving a serious question regarding the ability of state courts to enforce federal constitutional rights. Given its longstanding interest in the vindication of federal rights, the question before the Court is of substantial importance to the ACLU and its members.

STATEMENT OF THE CASE

The petitioner, Stephen Danforth, sought post-conviction relief in state court on the ground that his conviction had been obtained in violation of the Confrontation Clause as authoritatively interpreted by this Court in *Crawford v. Washington*, 541 U.S. 36 (2004). The Minnesota Supreme Court held that it could not consider the *Crawford* decision in its analysis because *Crawford* announced a "new rule" of federal procedural law within the meaning of *Teague v. Lane*, 489 U.S. 288 (1989). This Court granted certiorari to decide whether the Minnesota court erroneously understood that it was obligated to apply the *Teague* choice-of-law methodology in state post-conviction proceedings.

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[1] Pursuant to Rule 37.3, letters of consent to the filing of this brief have been lodged with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part and no person other than *amici curiae*, their members or their counsel made a monetary contribution to this brief.

SUMMARY OF ARGUMENT

Mr. Danforth's brief explains why the Minnesota Supreme Court fundamentally misunderstood both this Court's decision in *Teague* and the *Teague* doctrine as this Court has elaborated it in subsequent cases. The focus in *Teague* is exclusively on the appropriate choice-of-law methodology for federal habeas corpus courts to employ in order to avoid undue interference with previous proceedings in state court. The *Teague* doctrine is a means of orchestrating federal-state relations in the interests of comity and the finality of convictions. Those underlying rationales do not warrant imposing the *Teague* methodology on unwilling state courts.

This *amicus* brief does not repeat Mr. Danforth's arguments regarding the meaning of *Teague*, but places the question before the Court in a larger framework in order to clarify just how startling the decision below was. The Minnesota Supreme Court held that it was bound (not permitted, but bound) to set aside its own arrangements for addressing federal claims in state post-conviction proceedings and to adopt, instead, the federal doctrinal framework this Court has established for handling federal claims advanced in federal habeas corpus. Starting from that erroneous premise, the state court reached the astonishing conclusion that it was barred by federal law (of some stripe) from entertaining a claim of federal right, grounded in extant federal constitutional law.

No feature of federal law prohibits a state court from vindicating federal constitutional rights. The very idea is alien to federalism. State courts usually are *obligated* to enforce federal rights and, certainly, are never *forbidden* to do so. This Court has held, of course, that there are occasions when state courts may decline to consider federal claims in order to protect legitimate state interests. But the Court has never held that a state court is unable to make its own assessments of local interests.

In order to sustain the decision below, this Court must hold that some species of federal law overrides a state court's ability to recognize and enforce claims based on federal constitutional law. The Constitution *does* impose a choice-of-law methodology on all courts (federal and state) in cases in which the conviction is not yet final. But nothing in the Constitution requires a state court to apply federal law (in the form of *Teague*) as a choice-of-law methodology in state post-conviction proceedings.

Nor does any federal statute or body of decisional law preempt state arrangements in this context. This Court has long maintained a presumption against preemption and, on that basis, has demanded a clear indication that a federal statute or federal common law doctrine is meant to displace state law. No statute or decision of this Court (least of all *Teague*) indicates any such purpose. By contrast, Congress has encouraged state courts to implement existing holdings of this Court—by limiting the authority of federal courts to award habeas relief in the wake of a state decision on the merits that respects this Court's holdings at the time of the state court decision. 28 U.S.C. § 2254(d).

Nor, finally, does the "reverse-*Erie*" doctrine support the conclusion that federal law (specifically, *Teague*) applies in state post-conviction proceedings. Federal law governs in state court proceedings only when powerful federal interests prevail over competing local concerns. In this instance, federal interests in the vindication of federal constitutional claims are served *not* by forcing unwilling state courts to use *Teague* as their choice-of-law doctrine in state post-conviction proceedings, but rather by allowing state courts the ability to consider federal claims that federal habeas courts cannot entertain.

ARGUMENT

I. THE *TEAGUE* DOCTRINE IS A POLICY-DRIVEN CHOICE-OF-LAW METHODOLOGY TAILORED SPECIFICALLY FOR CASES ON COLLATERAL REVIEW IN FEDERAL COURT

The Minnesota Supreme Court misapprehended this Court's *Teague* jurisprudence. The point of *Teague* was to fashion a choice-of-law methodology for cases on federal collateral review, specifically federal habeas corpus. The *Teague* Court rehearsed the history of the problem stretching back to *Linkletter v. Walker*, 381 U.S. 618 (1965), described Justice Harlan's alternative approach, and adopted that approach (with significant modifications) for federal habeas corpus. *Teague*, 489 U.S. at 307-08. The Court explained that *Teague's* alternative analysis for federal habeas proceedings was devised in the interests of the "comity" owed to states and state courts and the "finality" of judgments. Thus, *Teague* was (and is) consistent with other doctrines governing the availability of federal habeas corpus—for example, the doctrine the Court has developed for federal courts to follow when state courts decline to consider federal claims on the ground that they were not properly raised in state court. *Id.* at 308.

Specifically, the Court held in *Teague* that the "costs imposed on the State[s] by the retrospective application of new rules of constitutional law *on habeas corpus* . . . generally outweigh the benefits." *Teague*, 489 U.S. at 310 (emphasis added) (quoting *Solem v. Stumes*, 465 U.S. 638, 654 (1984) (Powell, J., concurring in the judgment)). The "application of new rules to cases on collateral review . . . *continually* forces the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." *Id.* (emphasis in original). Against those state interests, the Court weighed the "purpose for which the writ of habeas corpus is made available"—namely, to provide "a necessary additional incentive to trial and appellate courts throughout

the land to conduct their proceedings in a manner consistent with established constitutional standards." *Id.* at 306 (quoting *Desist v. United States*, 394 U.S. 244, 262-63 (1969) (Harlan, J., dissenting)). To "perform this deterrence function," the Court explained, a "habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place." *Id.* (quoting *Desist*, at 262-63 (Harlan, J., dissenting)). In a subsequent decision, the Court said that *Teague* is meant effectively to "validate reasonable, good-faith interpretations of existing precedents by the state courts." *Butler v. McKellar*, 494 U.S. 407, 414 (1990).

Thus, the *Teague* decision and the general doctrine that has grown up around that decision have only to do with the appropriate analysis in federal habeas corpus—an analysis meant to ensure that federal courts do not interfere unduly with previous state court judgments. The comity and finality rationales behind *Teague* in federal habeas do not travel to *state* post-conviction proceedings—proceedings that produce the very state judgments that *Teague's* limit on federal habeas courts is meant to preserve from undue disruption.

II. THE CONSTITUTION DOES NOT BAR STATE COURTS FROM ENFORCING EXTANT FEDERAL RIGHTS IN STATE POST-CONVICTION PROCEEDINGS

The Minnesota Supreme Court confused this Court's decisions regarding the constitutionally grounded choice-of-law methodology for direct-review cases, on the one hand, with the Court's decisions regarding the policy-based choice-of-law methodology for cases on federal collateral review, on the other.[2]

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[2] The Court has made it clear that the temporal reach of a federal constitutional right is not a property of the right itself. Even in the heyday of *Linkletter v. Walker*, the Court treated the effective range of a

This Court held in *Griffith v. Kentucky*, 479 U.S. 314 (1987), that the Constitution mandates a choice-of-law framework for cases on direct review. Borrowing from Justice Harlan, the Court explained that "failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of *constitutional* adjudication." *Id.* at 322 (emphasis added) (relying on *Mackey*, 401 U.S. at 680 (Harlan, J., concurring in the judgment in part and dissenting in part)).

All courts (federal and state) are constitutionally obligated to employ the *Griffith* choice-of-law methodology at trial and on direct appeal. That methodology makes all federal claims cognizable. The familiarity or novelty of a legal argument is beside the point when a claim is examined prior to the date on which a criminal defendant's conviction becomes final. This Court decides direct-review cases on the basis of federal law as it stands at the time of decision and overturns any state court decision found to be erroneous.

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federal right not as an intrinsic element of the right proper, but, at most, as a function of its "purpose." *Linkletter*, 381 U.S. at 629. And, of course, the Court abandoned even that connection between a right and its field of operation when in *Teague* the Court embraced Justice Harlan's position on the matter:

> Inquiry into the nature, purposes, and scope of a particular constitutional rule is essential to the task of deciding whether that rule should be made the law of the land. That inquiry is, however, quite simply irrelevant in deciding, once a rule has been adopted as part of our legal fabric, which cases then pending in this Court should be governed by it.

Mackey v. United States, 401 U.S. 667, 681 (1971) (Harlan, J., concurring in the judgment in part and dissenting in part). There is no basis, then, for the idea that constitutional rights come with their own, embedded rules governing the temporal contexts in which they operate. In this case, for example, there is no plausible argument that the Confrontation Clause (or *Crawford's* interpretation of it) is inapplicable in state post-conviction proceedings by virtue of anything intrinsic to that clause.

There is no constitutionally grounded choice-of-law methodology for application after a conviction has become final. The question whether novel claims should be entertained in collateral proceedings is a matter of policy for the court concerned, not constitutional law. This Court has had occasion to make the necessary policy determination for purposes of *federal* habeas corpus proceedings and has chosen to adopt Justice Harlan's general position. As Justice Harlan explained, the choice-of-law doctrine appropriate for federal habeas turns on the "purpose for which the writ of habeas corpus is made available" in federal court. *Mackey*, 401 U.S. at 682 (Harlan, J., concurring in the judgment in part and dissenting in part).

In *Teague*, this Court adopted a choice-of-law methodology tailored to the purposes of federal habeas corpus. In doing so, the Court was clear, as Justice Harlan was clear, that the *Teague* doctrine is a matter of federal remedial policy formulated for use by federal habeas corpus courts. Thus, *Teague*, the very decision that articulated the doctrine the Minnesota Supreme Court thought it must follow, itself refutes any contention that state courts are under a constitutional obligation to conform to a choice-of-law doctrine shaped and adopted for federal habeas corpus. Rather, a state court is entitled to undertake its own assessment of its own interests and may, if it chooses, reach federal claims that *Teague* would foreclose in the federal forum.

Of course, a state court may run afoul of the Constitution if it employs arrangements for handling claims in post-conviction proceedings that fail to operate even-handedly or fairly. State choice-of-law practices that discriminate irrationally among litigants obviously can violate the Fourteenth Amendment. Yet a state scarcely must adopt the *Teague* doctrine to satisfy due process and equal protection standards in this context. For example, a state might validly employ the *Griffith* methodology or might adopt (and consistently apply) a definition of "new rules" that

is less expansive than the definition *Teague* specifies for federal habeas corpus.[3]

The cases upon which the Minnesota Supreme Court relied do not support the conclusi n that *Teague* is mandatory in state post-conviction proceedings. In *American Trucking Ass'n v. Smith*, 496 U.S. 167 (1990), this Court held that a state court is obligated to employ federal methodology to determine whether a constitutional decision by this Court is applicable to a civil case *while that case is in the direct review channel.*[4] There was nothing remarkable about that; *American Trucking* was merely the civil analog of *Griffith*. *American Trucking*, 496 U.S. at 214 (Stevens, J., dissenting); accord *Id.* at 201 (Scalia, J., concurring in the judgment).[5]

The Court did *not* say in *American Trucking* that a state court entertaining a claim in state *collateral* proceedings is constitutionally required to employ the choice-of-law methodology this Court has adopted, as a matter of policy,

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[3] The only constitutional issue the Court mentioned in *Teague* was the risk that prospective adjudication might produce advisory opinions—prohibited in federal courts, but not in state courts. The Court explained that one reason for distinguishing cleanly between direct- and collateral-review cases in federal court is to avoid unfairness among similarly situated litigants. The Court did not suggest, however, that the *Teague* doctrine in all its details is constitutionally required in the federal forum. Federal habeas petitioners are treated even-handedly not because they are subject to the particular definition of "new" rules the Court has adopted, but because they are all subject to the same definition, whatever it is.

[4] In *Ashland Oil v. Caryl*, 497 U.S. 916 (1990) (*per curiam*), also cited by the Minnesota Supreme Court below, this Court underscored that *American Trucking* was a "direct review" case—as was *Ashland Oil*. Id. at 918.

[5] In *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86 (1993), the Court formally adopted *Griffith* for direct-review civil cases. Today, accordingly, in both civil and criminal cases, state courts have a constitutional duty to employ the choice-of-law doctrine this Court has mandated for cases in which there has been no final judgment. *See also Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749 (1995); *James B. Beam Distill. Co. v. Georgia*, 501 U.S. 529 (1991).

for federal collateral review in habeas corpus. The whole point of *Teague* and *Griffith* is to distinguish collateral review from direct review. A state court may sensibly conclude that the policies underlying the *Teague* doctrine in federal habeas do not warrant a similar choice-of-law methodology in state post-conviction proceedings and thus may adopt a different analysis that leads state courts to entertain federal claims that would be foreclosed in federal habeas by virtue of *Teague*.[6]

In *Michigan v. Payne*, 412 U.S. 47 (1973), the Michigan Supreme Court had determined a federal claim in the defendant's favor on direct review, relying on *North Carolina v. Pearce*, 395 U.S. 711 (1969) (then recently decided). This Court reversed, explaining that *Pearce* was not "retroactive." At the time, however, the Court obviously had not yet recognized the crucial distinction (subsequently drawn in *Griffith* and *Teague*) between direct- and collateral-review cases. Examined according to today's framework, the decision in *Payne* was consistent with *Griffith* and thus correct insofar as it contemplated that the state court was obligated to employ a federal choice-of-law methodology to determine whether *Pearce* was applicable to the prisoner's claim. The case was still in the appellate pipeline and thus subject to the constitutionally mandated analysis for direct review cases. Yet the decision in *Payne* was inconsistent with *Griffith* and thus wrong by today's standards insofar as it overturned a state decision because it rested on a recent

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[6] In cases leading to the decision below, the Minnesota Supreme Court began well enough, but later faltered. In *O'Meara v. Minnesota*, 679 N.W.2d 334 (2004), the court held (correctly) that it was obligated to follow the federal choice-of-law doctrine in *Griffith* in a direct-review case. Unfortunately, the opinion in *O'Meara* dropped dicta suggesting that the *Teague* doctrine would control in state post-conviction proceedings. Then, in *Minnesota v. Houston*, 702 N.W.2d 268 (2005), the court held (incorrectly) that it was obligated to employ *Teague* choice-of-law methodology in a case on collateral review. The Minnesota court's mistake was to read language in this Court's direct-review cases out of context. Yet here, as elsewhere, context matters.

precedent that this Court (employing the *Linkletter* approach) regarded as unavailable.

This is not to suggest that a state court can deny that *Crawford* created a "new rule" within the meaning of *Teague*. Nor is it to propose that a state can conclude that the rule in *Crawford* is a "watershed" procedural rule for *Teague* purposes. Those are questions of federal law, and where they are implicated (in federal habeas proceedings) this Court's holdings are authoritative. This is rather to say that with respect to *state* collateral proceedings, a state court is not obligated to employ the *Teague* doctrine as its choice-of-law methodology. And if a state court does not adopt *Teague* (if, for example, it employs something akin to *Griffith*) the federal questions that *Teague* entails do not arise.

In this case, the Minnesota Supreme Court was free to adopt a choice-of-law methodology that permitted a claim based on *Crawford* to be considered. When the Minnesota Supreme Court addressed Mr. Danforth's claim, it was clear beyond cavil that *Crawford* stated an accurate rule of federal constitutional law. The state court may not have been constitutionally required to apply that rule of law, but it certainly was not constitutionally barred from doing so.

III. NON-CONSTITUTIONAL FEDERAL LAW DOES NOT PREEMPT STATE ARRANGEMENTS THAT PERMIT CONSIDERATION OF FEDERAL CLAIMS IN STATE POST-CONVICTION PROCEEDINGS

The Minnesota Supreme Court may also have misunderstood this Court's preemption precedents anchored on the Supremacy Clause. No federal statute or body of decisional law preempts a state's own choice-of-law doctrine in this context. The starting place for preemption analysis is the conventional default position prescribed by American federalism—namely, that "federal law takes the state courts as it finds them." Henry Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954).

Any preemption argument faces signficiant hurdles at the threshold. Federal law presumptively does *not* preempt state arrangements. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). If Congress means to dislodge state law, it must state that purpose "explicitly." *Cipollone v. Liggett Group*, 505 U.S. 504, 516 (1992) (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)). In the absence of "an express congressional command," federal law will be found to preempt state law only if federal and state requirements are in actual conflict or if federal law "so thoroughly occupies a legislative field" as to "make reasonable the inference that Congress left no room for the States to supplement it." *Cipollone*, 505 U.S. at 518 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Moreover, whenever possible, this Court does not construe federal statutes to have preemptive effect that, in turn, would raise constitutional issues. E.g., *Raygor v. Regents of Univ. of Minnesota*, 534 U.S. 533 (2002) (declining to read 28 U.S.C. § 1367(d) to preempt a state statute of limitations for purposes of claims that are dismissed in federal court on the basis of state sovereign immunity). This Court has noted the argument that state procedural arrangements for litigation in state court may enjoy a measure of constitutional protection. In *Jinks v. Richland County*, 538 U.S. 456 (2003), the Court explained: "W]e need not (and do not) hold that Congress has unlimited power to regulate practice and procedure in state courts." *Id.* at 465.[7] No federal statute remotely prescribes federal arrangements for the states to follow in their own post-conviction proceedings. To the contrary, the statutes in place

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[7] In *Jinks*, the Court read the tolling provision involved in *Raygor* to suspend a state limitations period where no constitutional sovereign immunity was implicated. Under the Court's construction of the federal statute, the preemption of state law was essential to the ability of federal courts to adjudicate claims within their jurisdiction. In those circumstances, the Court had no constitutional doubts about the federal statute's validity (read that way) and thus gave the federal statute preemptive effect.

focus exclusively on the *federal* courts. Time and again, *federal* habeas statutes are expressly addressed to *federal* courts, justices or judges, and, concomitantly, to applications for the *federal* writ of habeas corpus. E.g., 28 U.S.C. § 2254. The unavoidable conclusion is that Congress has taken responsibility for establishing (and limiting) the purview of federal courts, but has not thought it advisable or appropriate to superintend the states and their courts. Indeed, the restrictions Congress has placed on federal habeas corpus are plainly meant to prevent federal courts from interfering with state courts.

Far from requiring state courts to employ *Teague*, Congress has enacted legislation that assumes that state courts may choose to entertain federal claims based on rules of federal law as they currently stand—not, as *Teague* would have it, at the time a prisoner's conviction became final on direct review. Under § 2254(d), a federal court's authority to grant habeas relief turns on a state court's adherence to this Court's holdings "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (opinion for the Court by O'Connor, J.). Indeed, § 2254(d) plainly *encourages* state courts to implement extant decisions of this Court, whether or not those decisions were in place at the time a prisoner's conviction became final. If a state court does not, the resulting judgment will not be entitled to the deference that § 2254(d) ordinarily directs federal habeas courts to accord to state court judgments on the merits.

This Court has not fully considered the implications of the different dates that *Teague* and § 2254(d) make crucial in federal court -- the date on which a conviction became final (*Teague*), and the date on which a state court reached a decision on the merits of a federal claim (§ 2254(d)) -- and there is no need to do so here. Yet one possible and problematic consequence of imposing *Teague* on state post-conviction proceedings would be to place state courts in an inescapable bind. In a case in which a prisoner's claim rests on a recent holding by this Court that announced a "new rule" within the meaning of *Teague*, a state court would be

unable to entertain the claim in post-conviction proceedings. But the state court's failure to follow such a holding would be contrary to clearly established federal law at the time of the state court's decision. Accordingly, the state court's decision would not be entitled to deference under § 2254(d) in subsequent federal habeas corpus proceedings.

No decision by this Court purports to impose federal choice-of-law methodology on state post-conviction practice. When the Court establishes federal decisional law with preemptive effect, the Court makes it perfectly clear what it is doing and why. *E.g.*, *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988) (acknowledging and explaining the recognition of a federal common law "contractor defense" that displaced state liability rules). As Mr. Danforth's brief explains, *Teague* is concerned only with the proper role of federal courts—again to avoid interference with state courts. Nothing in *Teague* or any subsequent decision in the *Teague* line reflects any intention to reach into state court proceedings and to give states' attorneys a federal common law argument for defeating a federal constitutional claim.

IV. THE "REVERSE *ERIE*" DOCTRINE DOES NOT REQUIRE STATES TO FOLLOW *TEAGUE* IN STATE POST-CONVICTION PROCEEDINGS

The Minnesota Supreme Court could not plausibly have concluded that the federal *Teague* doctrine is applicable in state court by virtue of the "reverse-*Erie*" doctrine.[8] There

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[8] The *Teague* doctrine provides a federal choice-of-law methodology for federal courts to apply in deciding whether to entertain a federal claim in federal habeas—directing them to apply "old" rules of procedural law, but not "new" rules (other than "watershed" rules). The reverse-*Erie* doctrine supplies a choice-of-law methodology for state courts to employ in deciding whether state or federal law applies to legal questions arising in state proceedings. We agree that reverse-*Erie* is a federal choice-of-law analysis that state courts are obligated to employ—subject to review in this Court. We do not agree that, in this instance, reverse-*Erie* leads to

are, to be sure, circumstances in which federal law supersedes state law in cases adjudicated in state court—but always to protect important federal interests. The Federal Employers' Liability Act cases, *Brown v. Western Ry.*, 338 U.S. 294 (1949), and *Dice v. Akron, Canton & Youngstown R. Co.*, 342 U.S. 359 (1952), are illustrations. Federal arrangements for pleading and trial by jury were applicable in those instances because competing, inconsistent state practices compromised federal rights. Likewise, in *Felder v. Casey*, 487 U.S. 131 (1988), federal law overrode a state notice requirement, but only to prevent the frustration of federal claims.[9]

When federal interests are *not* at risk, as they are not here, federal law does *not* displace state law. The best illustration is *Johnson v. Fankell*, 520 U.S. 911 (1997), where the Court concluded that the federal rule permitting interlocutory review of decisions denying qualified immunity at the trial level was limited to federal court and need not be followed by the states in state court proceedings. By denying the right to an interlocutory appeal, the state practice upheld in *Johnson* fostered federal interests in vindicating *plaintiffs'* federal rights. And while competing state interests might have justified postponing trials to allow for interlocutory appeal, there was no basis for introducing federal law to

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the conclusion that federal (*Teague*) choice-of-law methodology is applicable in state court.

[9] The Court's admiralty precedents are to the same effect. In some admiralty contexts, the federal interest in uniformity justifies the substitution of federal law for the local rules that state courts would ordinarily follow. *E.g.*, *Offshore Logistics v. Tallentire*, 477 U.S. 207 (1986). But when federal interests are insufficiently strong, state courts are entitled to apply state-law arrangements. *E.g.*, *American Dredging Co. v. Miller*, 510 U.S. 443 (1994). Of course, the Court has often been divided over whether federal interests warrant the extraordinary step of displacing state law. That internal disagreement underscores that the analysis necessarily involves an assessment of relevant federal interests, the absence of which would easily lead to the conclusion that state law governs in state court in the ordinary course.

protect state interests the state itself regarded as of secondary importance.[10]

In this case, the federal interests are all on the side of vindicating the prisoner's federal, Sixth Amendment rights. There are competing state interests on the other side, chief among them the interests associated with finality. But if the Minnesota Supreme Court puts federal interests first, there is no basis in any reverse-*Erie* precedent for imposing the federal *Teague* methodology upon the state court.

The *Teague* doctrine was not established to displace state arrangements for entertaining federal claims, but to prevent federal habeas courts from interfering with state arrangements. This is especially apparent in the Court's definition of "new" rules (which cannot be entertained in a federal habeas court). The Court has explained that "new" rules are not limited to "clear breaks" from precedent. "[G]radual developments in the law over which reasonable jurists may disagree" can also produce "new" rules. *Sawyer v. Smith*, 497 U.S. 227, 234 (1990). Unless previous precedents "dictated" or "compelled" the conclusion that a prisoner's claim was valid when his or her conviction because final, a district court would have to create a "new" rule in order to find the prisoner's claim meritorious today. *Saffle v. Parks*, 494 U.S. 484, 488 (1990). A federal habeas court will not entertain a claim in a habeas posture "unless it can be said that a state court, at the time the conviction or sentence became final, would have acted objectively

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[10] The Court explained in *Fankell* that the defendants' qualified immunity "ha[d] its source in a federal statute" (42 U.S.C. § 1983). Yet the "ultimate purpose" of that immunity was the protection of state officials from the "overenforcement of federal rights." Accordingly, the state court's failure to allow an interlocutory appeal was "less an interference with *federal* interests than a judgment about how best to balance the competing *state* interests of limiting interlocutory appeals and providing state officials with immediate review of the merits of their defense" (against the plaintiff's federal constitutional claim). Id. at 919 (emphasis in original).

unreasonably by not extending the relief sought in federal court." *O'Dell v. Netherland*, 521 U.S. 151, 156 (1997).

The expansive *Teague* definition of what counts as "new" in federal habeas proceedings not only insulates state convictions from attack to protect state interests in finality, but also shields state judgments on federal questions. This *Teague* account of "new" rules necessarily subordinates federal interests in the vindication of federal rights. Obviously, a federal claim can be meritorious even if, at the time the prisoner's conviction became final, a state court might reasonably have rejected it. Yet the Court has made the policy judgment that federal interests should yield *in federal habeas proceedings* for these two, related reasons: to protect countervailing states interests in the finality of state judgments and to prevent inferior federal courts from entertaining federal claims and reaching results at odds with previous "reasonable" state decisions.

There is no justification for *forcing* state courts to employ *Teague's* definition of cognizable claims, when the Court itself has tailored that definition exclusively for federal courts in an effort to accommodate state interests and prevent federal courts from second-guessing state judgments. The states themselves are in a far better position to identify and weigh the local interests implicated in state convictions challenged on federal grounds. See *Johnson v. United States*, 544 U.S. 295, 316-17 (2005) (Kennedy, J., dissenting) (joined by Stevens, Scalia, and Ginsburg, J.J.) (acknowledging that states are "free to impose time limitations" on the availability of post-conviction relief if they conclude that such limits are "necessary to protect the integrity of their own judgments" but explaining that states may elect not to do so).

Moreover, the *Teague* doctrine in federal court absorbs enormous federal resources. The federal judicial system devotes countless hours poring over the precedents to make the judgments *Teague* requires. Often enough, those judgments are reached by divided vote. Yet, again, the Court

has concluded that the complex, demanding *Teague* doctrine in federal court is justified to safeguard state interests and to preserve "reasonable" state court judgments on the merits of federal claims.

It would be grossly inefficient for the Court to insist that state courts, too, must wrestle with the burdensome litigation required to resolve close questions regarding the *Teague* definition of "new" rules.[11] A state court might well select a more prisoner-friendly choice-of-law methodology for state post-conviction proceedings, either to put itself in a position to vindicate federal constitutional rights or to spare itself the time-consuming task of sorting "new" rules from "old" within the meaning of *Teague*. If so, there is no federal interest to be served by trumping that choice and thus no warrant for substituting federal law for state law in this context.

The Court has held that a state may decline to invoke *Teague* in federal habeas corpus and choose, instead, to join issue with a habeas petitioner on the merits of a claim that *Teague* would foreclose. *Caspari v. Bohlen*, 510 U.S. 383, 389 (1994). That feature of the *Teague* doctrine itself reflects the understanding that states may prefer (and are entitled to prefer) to address federal claims forthrightly rather than fend them off on the basis of countervailing state interests in the finality of judgments.[12]

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[11] Proceeding from the erroneous premise that it is obligated to employ *Teague*, the Minnesota Supreme Court has thought itself bound to grapple both with *Teague's* definition of "new" rules, e.g., *Houston*, 702 N.W.2d at 271-73, and with *Teague's* exception for "watershed" rules of procedure. *Id.* at 273-74; *Danforth v. State*, 718 N.W.2d 451, 457-61 (Minn.Sup.Ct.2006).

[12] Moreover, by hypothesis, state prisoners who are in a position to advance claims that *Teague* (if raised) would bar from federal court must have exhausted the avenues for litigating those claims in state court. It is a fair inference that, in some number of cases, state courts have previously chosen to hear claims that *Teague* would foreclose in federal court, thus setting up occasions for state's attorneys to waive *Teague* and address the same claims when cases reach federal habeas. The operation

To impose *Teague* on state courts in the absence of federal interests would depart dramatically from the body of precedents the Court has developed to orchestrate federal-state relations in this field. In some instances, the Court has analyzed the federal and state interests at stake and concluded that state interests are paramount. Accordingly, the Court has concluded that state law governs in state proceedings at the sacrifice of federal interests. The Court has held, for example, that federal habeas courts must ordinarily give effect to state procedural grounds for cutting off federal claims. *Wainwright v. Sykes*, 433 U.S. 72 (1977).

Yet the Court has never held that state courts *must* employ strict default arrangements and cannot choose, instead, to reach the merits of federal claims. In *Uttecht v. Brown*, 551 U.S. ___, 127 S.Ct. 2218 (2007), for example, the Court noted that state law did not require a defendant to object to a prosecutor's use of peremptory challenges and that there was "no independent federal requirement" to object that the state court was obligated to recognize. *Id.* at 2229 (explaining that "state procedural rules govern"). If a state court itself concludes that state interests do not outweigh federal interests, and federal rights are thus enforced in state court, there is no plausible argument for imposing an alternative federal doctrine that would defeat federal claims. Cf. *Smith v. Texas*, ___ U.S. ___, ___, 127 S.Ct. 1686, 1703 (2007) (Alito, J., dissenting) (noting that a state court ordinarily has "no legal obligation to consider a preliminary nonmerits issue" and may choose "to bypass the preliminary issue and rest its decision on the merits").

This pattern is repeated in a host of other settings. The Court acknowledged in *Washington v. Recuenco*, ___ U.S. ___, 126 S.Ct. 2546 (2006), that the State of Washington might well have a more prisoner-friendly

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of *Teague* in federal court is thus perfectly consistent with the existence of a less rigid choice-of-law doctrine in state court.

harmless-error doctrine that would upset a conviction in circumstances in which the standard applied in federal habeas corpus proceedings would not. *Id.* at 2551 n.1. And in *Johnson v. United States*, 544 U.S. 295 (2005), the Court explained that while Georgia might have established a filing deadline to cut off state post-conviction consideration of a federal claim, Georgia had elected, instead, to entertain the claim. *Id.* at 309.[13]

The Court has read certain federal statutes to make demands of litigants in state proceedings over and above the requirements that state law imposes. Those statutes do not prevent state courts from reaching the merits of federal claims, but forestall or postpone the consideration of claims in *federal* court. Of course, in those instances the Court deferred to what it regarded as legislative policy ascribed to Congress. The *Johnson* case is an illustration. *Id.* at 308 (majority opinion) (explaining that a federal "diligence" requirement operating on litigants in state court was essential to implement a "statutory mandate" regarding the filing deadline for a federal petition). Cf. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999) (requiring state prisoners to present federal claims in a discretionary petition to the state's highest court because the relevant federal statute demanded that prisoners exhaust any "available" state procedure before going to federal court). On no account did the Court itself presume to superintend state court practices.

To be sure, local arrangements peculiar to individual states necessarily produce different results in factually similar cases. But variations of that sort are necessarily entailed in

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[13] The Court has acknowledged similar federal claim-preserving state practices in other contexts. A state is not obligated to employ federal constitutional standing doctrine to determine who can advance federal claims in state court. That doctrine responds to federal separation-of-powers concerns that do not exist in state proceedings. Accordingly, a state is free to formulate its own standing rules, which admit litigants to state court who could not press federal claims in federal court. *ASARCO v. Kadish*, 490 U.S. 605, 617 (1989) (explaining that this result "follows from the allocation of authority in the federal system").

federalism. It is a mistake to expect the bifurcated American justice system to generate uniformity in every instance, and a mistake to believe that disuniformity, when it occurs, is necessarily a bad thing. Disuniformity may, instead, be a function of differing judgments about the state interests implicated, and in many instances states may prefer to advance federal interests in the enforcement of federal rights. There are cases in which powerful federal interests justify forcing state courts to employ federal standards for doing federal-question business in state court. This case, by contrast, is one in which no federal interests would be served by doing so. Indeed, federal interests would be sacrificed to state interests that, by hypothesis, the state court concerned regards as insufficient.

Variations in results among different states, produced by variations in state choice-of-law doctrines employed in state post-conviction proceedings, do not threaten a uniform body of federal constitutional law. If that were true, then differing state arrangements for procedural default, harmless error, or filing periods would be equally objectionable. Decisions on the *merits* of federal claims must conform to a single, accurate standard. But results in similar cases routinely vary in different jurisdictions, when state courts follow their own local practices for deciding whether to *reach* the merits.

CONCLUSION

For the reasons stated above, the judgment below should be vacated and the case remanded to the Minnesota Supreme Court for further proceedings, with the explanation that the state court is not obligated to employ the *Teague* choice-of-law doctrine to determine whether to consider this Court's decision in *Crawford* as it examines Mr. Danforth's federal claim.

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